

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 27th day of May, 1998

Before :

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

H.R.R.P. No. 763 of 1998

H.S. Jayaram,  
s/o late N.S. Siddappa,  
Pansare Shop,  
Gandhi Bazar, Hassan

.. Petitioner

(By Sri S.P. Shankar, Advocate)

-Vs-

1. Smt. Vijayalakshmi,  
s/o late H. V. Ranganatha Setty;
  2. Sri H.R. Venkatesh,  
s/o late H.V. Ranganatha Setty;
  3. H.R. Jagadeesh,  
s/o late H.V. Ranganatha Setty;
  4. H. R. Ramesh,  
s/o late H.V. Ranganatha Setty;
  5. H.R. Satheesh,  
s/o late H.V. Ranganatha Setty;
  6. H.R. Nagesh,  
s/o late H.V. Ranganatha Setty;
  7. H.R. Rajesh,  
s/o late H.V. Ranganatha Setty
- .. Respondents

H.R.R.P. is filed praying to quash the order dated 18-3-1998 passed in HRC RP No.38/93 on the file of the Addl. Dist. and Sessions Judge, Hassan, partly allowing the revision petition and setting aside the order passed in HRC No.51/87 dated 9-7-1993 on the file of the Munsiff and JMFC, Hassan, allowing the petition filed u/s 21(1) (h) and (p) of KRC Act.

This H.R.R.P. coming on for Admission this day, the Court made the following:-

O R D E R

This is a tenant's petition under Section 115 of the Code of Civil Procedure. The respondents herein are the landlords of a shop premises which is in the occupation of the petitioner. The landlords filed the eviction petition under the provisos (h) and (p) of Section 21(1) of the Karnataka Rent Control Act, 1961 [for short, the Act].

2. The landlords contended that when the premises was let out to the tenant by the father of respondents 2 to 7, respondents 2 to 7 were all still students, that the premises was required for the use of third respondent herein who wanted to start a business in sanitary fittings and furniture in order to earn his livelihood. They also contended that they, and before them, the father of respondents 2 to 7, had been requesting the petitioner to vacate the premises; and the tenant will not be put to any hardship if he is ordered to vacate the premises.

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3. The landlords also contended that the tenant has acquired a suitable premises for carrying on his business [premises bearing khata No 4121 of Hosaline, Santhepet, Hassan]; that the tenant had initiated eviction proceedings against his tenants in the said premises in HRC Nos 100 and 101 of 1980 on the ground that his landlord was pressing him to vacate the premises; and the eviction petitions <sup>(against his tenants)</sup> filed by the tenant <sup>✓</sup> were allowed and the same were also confirmed by the district court in HRC RC 30 and 31 of 1982.

4. The trial court allowed the petitioner by an order dated 9-7-1993, both under provisos (h) and (p). The trial court accepted the contention of the landlords that the petition schedule premises, was bona fide and reasonably required by the third respondent herein and greater hardship would be caused to the landlords if an order of eviction was not passed than the petitioner herein. The trial court also held that the landlords were entitled to succeed under proviso (p). The court found that the tenants of the tenant [petitioner herein] had filed revision petitions before this court against the orders in HRC RC 30 <sup>and</sup> 31/1982 and those petitions <sup>✓</sup>

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were rejected by this court and the tenant had obtained the vacant possession of the shops for his business from his tenants in the year 1993. As the petitioner<sup>herein</sup> had already obtained vacant possession of suitable alternative accommodation, the court found that the petitioner was liable to be evicted under proviso (p) also. The court also held that the tenant, who had contended that his own shops were suitable for his business in the eviction petitions filed against his tenants, cannot now contend that the said shops are not suitable after obtaining vacant possession thereof.

5. Feeling aggrieved, the tenant filed HRR RP 38/1993. The Revisional court allowed the petition in part by order dated 18-3-1998. In regard to the ground under proviso (h), the revisional court accepted the contention that the trial court had not considered the question of partial eviction. Hence, the revisional court set aside the order of eviction under proviso (h) and remanded the matter to the trial court to decide the question of partial eviction. In regard to the decision rendered under proviso (p), the revision court affirmed and upheld the order of eviction passed by

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the trial court and directed the eviction of the petitioner granting him three months time to vacate the premises.

6. The petitioner is aggrieved. He has raised two contentions:

(1) when the matter is remanded to the trial court for decision under proviso (h), the revisional court ought to have directed that the eviction order under proviso (p), could not be executed until trial Court renders a decision in regard to subject matter of the remand. The order of remand in regard to the decision under proviso (h) of Section 21(1) will be rendered infructuous, if the landlord is permitted to execute the order of eviction under proviso (p) without awaiting the decision under proviso (h).

(2) Proviso (p) to Section 21(1) of the Act provides for eviction of a tenant, if the tenant has built or acquired vacant possession of or has been allotted a suitable building. Therefore, a petition under proviso (p) will have to be rejected unless the landlord establishes that the tenant had

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vacant possession of another suitable premises on the date of eviction petition. In this case, as the tenant had not obtained vacant possession of his own two shops, as on the date of eviction petition, but had merely obtained orders of eviction on the date of eviction petition, the petition was liable to be rejected under proviso (p). The fact that the tenant got vacant possession of his shops in the year 1993, during the pendency of the eviction petition is not a ground for eviction under proviso (p).

RE: GROUND (1):

6. Each of the provisos (a) to (p) to Section 21(1) of the Act contain a separate and distinct ground of eviction. Each ground is independent and furnishes a separate cause of action for eviction. A landlord may file an eviction petition under a single proviso or under several provisos, depending on the number of grounds available. Success or failure in respect of one ground does not depend on success or failure of the other ground/s. A landlord may fail in regard to one ground and succeed in other ground/s. For example, if the

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landlord files a petition under provisos (h) and (p), he may succeed under both or either of the grounds. If he fails under ground (p) and succeeds under ground (h), he can execute the order of eviction under proviso (h). On the other hand, if the landlord fails under proviso (h), but succeeds under proviso (p), he can execute the order under (p). When the landlord fails under proviso (h), he may accept the decision under proviso (h) and merely proceed to execute the order under proviso (p); or he may <sup>also</sup> challenge the rejection of the petition under proviso (h) by filing a revision petition. If a landlord can execute an order under proviso (p), even if his case is rejected under proviso (h), there is no reason why the order under proviso (p) cannot be executed, if the case under ~~proviso~~ (h) is not rejected but is only remanded for reconsideration. Surely, a remand is not worse than total failure or rejection.

8. ~~Hence,~~ <sup>If</sup> the Revisional court holds that tenant was liable to be evicted under one ground, there is no reason to postpone the execution of that order merely because it finds that another ground of eviction requires reconsideration by way

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of remand. The ground under proviso (p) has absolutely no connection or link to the ground under proviso (h). Even if the landlords were to fail under proviso (h) on remand, their right to obtain possession under proviso (p) remains unaltered. In fact the remand in regard to ground under the proviso (h) became necessary on account of a legal requirement that a court should not pass an order of eviction under proviso (h) unless the question of partial eviction is considered. In this case, as the Revisional court felt that the trial court had not considered that aspect in regard to the ground under proviso (h), the Revisional court merely followed ~~a the~~ legal requirement, by ordering remand in regard to ground under proviso (h). There is no anomaly in passing an order of eviction under one ground, which could be executed and remanding the matter in regard to another ground, as there was no proper finding in regard to that ground. As stated earlier, each ground under the provisos to Sec 21(1) of the Act furnishes an independent cause of action and enforcement or execution of an order under one

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ground need not await the order on remand regarding another ground. Hence, the first contention is liable to be rejected.

RE:GROUND (2):

9. It is no doubt true that proviso (p) refers to tenant acquiring vacant possession of a suitable building. But, the interpretation put forth by the tenant, that eviction can be ordered under proviso (p) only if the tenant has vacant possession as on the date of the petition, is not sound. The relevant portion of Section 21 reads as follows:

"Provided that the court may, on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely, ..

xxx            xxx            xxx  
(p) that the tenant whether before or after the coming into operation of this part has built, or acquired vacant possession of or been allotted, a suitable building."

A careful reading of the section shows that the tenant need not have vacant possession of a suitable building on the date of eviction petition to maintain a petition under proviso (p).

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10. It is now well settled that the court can take note of the subsequent events in granting relief under the Act [see the decision of the Supreme Court in **P V PAPANNA vs K PADMANABHAIAH AIR 1994 KAR 2320**]. The fact that the tenant had filed eviction petitions against his tenants and obtained vacant possession of two shops on the ground that he has to vacate the petition schedule premises, is not in dispute. Though on the date of filing of eviction petition by the landlords, the tenant was holding only orders/decrees for possession <sup>against his tenants,</sup> and did not have actual vacant possession, having regard to the fact that during the pendency of the petition, the petitioner obtained the vacant possession before the date of the order, the landlords are entitled to succeed under proviso (p).

11. The position can be elaborated by another illustration. Let us assume a case where a tenant constructs a suitable house in the year 1996 and instead of occupying it, lets it out in 1996. The landlord may file a petition under proviso (p) in 1997 and obtain an order of eviction, as the conditions prescribed in (p) are fulfilled, even though the tenant did not have actual vacant

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possession on the date of eviction petition. Similarly, if the tenant secures vacant possession of a suitable building and after an eviction petition is filed against him under proviso (p), sells the property and therefore does not have vacant possession of a suitable building on the date of order of eviction, nevertheless the landlord will be entitled to an order of eviction under proviso (p), as the conditions for eviction are satisfied.

12. There is a concurrent findings in regard to eviction under proviso (p). The present revision petition is filed under Sec 115 of CPC. The court will not normally vary or reverse any decree or order under Sec 115, except where the order, if allowed to stand, would amount to failure of justice or cause irreparable injury to the party against whom it was made. In this case, no failure of justice will occur, if the order is allowed to stand. But failure of justice will occur if the narrow interpretation put forth on behalf of the tenant is accepted. The tenant has obtained possession of two shops from his tenants by filing eviction petitions contending that the said shops

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were suitable for his use and that he required them as he had to vacate the petition schedule premises. Having obtained such orders of eviction and the same having been affirmed by this court, the tenant will not be permitted to now contend that the 'suitable shops' have now become 'unsuitable'.

13. For the aforesaid reasons, the case does not merit interference under Section 115 CPC. The petition is therefore rejected.

14. At this stage, learned Counsel for the tenant submitted that some time may be granted to the petitioner to vacate premises. Having regard to the fact that the tenant has already obtained vacant possession of two shops in 1993 for his business, he is not entitled to any time. However, the petitioner is granted fifteen days time to vacate and hand over the vacant possession of the petition schedule premises.

Sd/-  
JUDGE

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